

**DARNELL WINSTON WALKER,**

**Plaintiff,**

**v.**

**ROBERT WILKIE, Secretary of Veterans**  
**Affairs,**

**Defendant.**

**THIS MATTER** comes before the Court on Plaintiff's Motions for Default Judgment, (Doc. Nos. 10, 14), Defendant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, (Doc. No. 15), the Magistrate Judge's Memorandum and Recommendation ("M&R"), (Doc. No. 24), Plaintiff's Objections, (Doc. No. 27), and Plaintiff's Motion for Recusal and Disqualification of Magistrate Judge, (Doc. No. 30).

Plaintiff filed her pro se Complaint against Defendant on November 19, 2018 alleging unequal terms and conditions of employment, retaliation, and hostile work environment based on race and gender in violation of Title VII of the Civil Rights Act of 1964. (Doc. No. 1.) On March 12, 2019, Plaintiff filed a Motion for Default Judgment. (Doc. No. 10.) Plaintiff filed a second Motion for Default Judgment on March 28, 2019. (Doc. No. 14.) On April 3, 2019, Defendant filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment. (Doc. No. 15.) In the M&R, the Magistrate Judge recommended that the Court grant Defendant's motion and

dismiss this case. (Doc. No. 24, at 7.) After the Magistrate Judge issued the M&R, Plaintiff filed a Motion for Recusal and Disqualification of Magistrate Judge. (Doc. No. 30.)

## II. DISCUSSION

### A. Motions for Default Judgment

Rule 55 of the Federal Rules of Civil Procedure governs Plaintiff's Motions for Default Judgment. "Rule 55 sets forth a two-step process for obtaining a default judgment." Brown v. Prime Star Grp., Inc., No. 3:12-cv-165, 2012 U.S. Dist. LEXIS 141495, at \*5 (W.D.N.C. Sept. 30, 2012). A plaintiff must first seek an entry of default under Rule 55(a). L & M Cos. v. Biggers III Produce, Inc., No. 3:08-cv-309, 2010 U.S. Dist. LEXIS 46907, at \*14 (W.D.N.C. Apr. 9, 2010). Rule 55(a) states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). "Upon the entry of default, the defaulted party is deemed to have admitted all well-pleaded allegations of fact contained in the complaint." Brown, 2012 U.S. Dist. LEXIS 141495, at \*4.

"After the clerk has entered a default, the plaintiff may seek a default judgment." Silvers v. Iredell Cty. Dep't of Soc. Servs., No. 5:15-cv-00083, 2016 U.S. Dist. LEXIS 13865, at \*9 (W.D.N.C. Feb. 3, 2016). Default judgment is proper "only if the well-pleaded factual allegations in a complaint both establish a valid cause of action and entitle the plaintiff to an award of damages or other relief." i play. Inc. v. D. Catton Enter., LLC, No. 1:12-cv-22, 2015 U.S. Dist. LEXIS 29870, at \*6 (W.D.N.C.

Mar. 10, 2015).

Plaintiff has not obtained an entry of default; however, entry of default is not appropriate in this case. The Court granted Defendant an extension of time to answer or otherwise respond to Plaintiff's Complaint, and Plaintiff filed the Motions for Default Judgment prior to this extended deadline. On April 3, 2019, Defendant timely responded to Plaintiff's Complaint by filing a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment. As Defendant has not failed to plead or otherwise defend, entry of default is not appropriate. Accordingly, Plaintiff's Motions for Default Judgment are denied.

**B. Motion to Dismiss or, in the Alternative, Motion for Summary Judgment**

A district court may assign dispositive pretrial matters to a magistrate judge for "proposed findings of fact and recommendations." 28 U.S.C. § 636(b)(1)(B). The Federal Magistrate Act provides that a district court "shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made." *Id.* at § 636(b)(1); Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After de novo review of the record, the M&R, and Plaintiff's Objections thereto, the Court concludes that the recommendation to grant Defendant's motion is fully consistent with and supported by current law. Therefore, the Court adopts the M&R.

**C. Motion for Recusal and Disqualification of Magistrate Judge**

Having concluded that Defendant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment should be granted, the Court denies as moot

Plaintiff's Motion for Recusal and Disqualification of Magistrate Judge.

### III. CONCLUSION

**IT IS THEREFORE ORDERED** that:

1. Plaintiff's Motions for Default Judgment, (Doc. Nos. 10, 14), are **DENIED**;
2. The Magistrate Judge's M&R, (Doc. No. 24), is **ADOPTED**;
3. Defendant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, (Doc. No. 15), is **GRANTED** and Plaintiff's Complaint is **DISMISSED**;
4. Plaintiff's Motion for Recusal and Disqualification of Magistrate Judge, (Doc. No. 30), is **DENIED as moot**; and
5. The Clerk of Court is directed to close this case.

Signed: October 8, 2019



Robert J. Conrad, Jr.  
United States District Judge

